

The Honorable Richard A. Jones
The Honorable James P. Donohue

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KYLE LYDELL CANTY,

Plaintiff,

vs.

CITY OF SEATTLE, et. al.,

Defendants.

)
)
) No. 2:16-cv-01655-RAJ-JPD
)
)
) KING COUNTY DEFENDANTS'
) REPLY IN SUPPORT OF KING
) COUNTY'S MOTION TO DISMISS
) AND MOTION FOR SUMMARY
) JUDGMENT
)
) NOTED ON MOTION CALENDAR
) October 27, 2017

I. INTRODUCTION

Defendants' Motion to Dismiss and Motion for Summary Judgment is noted for October 27, 2017. Pursuant to LCR 7(d)(3), Plaintiff's responsive brief was due to be served and filed by Monday October 23, 2017. To date, Plaintiff has filed no response to the motion and any response filed hereafter is untimely. However, on October 16, 2017, Plaintiff filed a motion for extension of time that is noted for November 3, 2017.¹

II. ARGUMENT

¹ Plaintiff's pleading indicated a noting date of October 20 which did not comport with LCR 7 and the Court properly noted the motion for November 3.

1 Under LCR 7(b)(2), if a party fails to file papers in opposition to a motion (except for a
 2 motion for summary judgment), such failure may be considered by the court as an admission that
 3 the motion has merit. As such, the Court should grant Defendants' motion to dismiss as a
 4 sanction or willfull discovery violations. Alternatively, this Court should grant summary
 5 judgment as the motion and supporting materials, including the facts considered undisputed in
 6 accordance with Fed. R. Civ. P. 56(e)(2), show that the Defendants are entitled to summary
 7 judgment.

8 Plaintiff's motion for additional time should be denied for a number of reasons. *Pro se*
 9 litigants are bound by the same rules of procedure as attorneys. *King v. Atiyeh*, 814 F.2d 565,
 10 567 (9th Cir.1987); *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). As such, Plaintiff was
 11 bound to comply with LCR 7(j) requiring him to file his motion for an extension with sufficient
 12 time for the court to rule and to comply with the existing deadline unless the court had ordered
 13 otherwise. He failed to do so and failed to comply with the existing deadline. Further, in order
 14 to obtain an extension of time to respond to a motion for summary judgment a plaintiff must
 15 show "by affidavit or declaration that, for specified reasons, it cannot present facts essential to
 16 justify its opposition." Fed. R. Civ. P. 56. Plaintiff Canty has failed to comply with this rule.
 17 Plaintiff's only argument for additional time is that he believes he will be released on November
 18 1, 2017 and that he does not have sufficient time to respond while incarcerated in Shelton. (Dkts.
 19 138, 139) This fails to explain why he could not respond to Defendants pending motions since
 20 they were filed on September 29, 2017. Notably, Plaintiff has had sufficient time since that date
 21 to file **thirteen** different pleadings in this case including nine of which that appear to be motions
 22 requesting relief of a varied nature. He has been able to research, write, and file all of these
 23

1 pleadings while incarcerated.² Thus, there is no reasonable explanation why Plaintiff has failed
2 to respond to these motions in a timely fashion.

3 **III. CONCLUSION**

4 For the aforementioned reasons and those contained in King County's motions to dismiss
5 and for summary judgment, the Court should dismiss Canty's entire suit with prejudice.

6
7 DATED this 27th day of October, 2017.

8 DANIEL T. SATTERBERG
9 King County Prosecuting Attorney

10 By: /s/ Samantha D. Kanner
11 SAMANTHA D. KANNER, WSBA #36943
12 Senior Deputy Prosecuting Attorney
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² Plaintiff has filed more than two dozen motions in this matter, all while incarcerated.

CERTIFICATE OF FILING AND E-SERVICE

I hereby certify that on October 27, 2017, I electronically filed the foregoing document(s) with the Clerk of the Court using the CM/ECF E-Filing System, thus electronically serving counsel for City of Seattle Defendants, and notifying of such filing to the following:

Kyle Lydell Canty
DOC #401358
Washington Corrections Center
P.O. Box 900
Shelton, WA 98584
DOCWCCInmateFederal@DOC1.WA.GOV

I certify under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 27th day of October, 2017.

/s/Lindsey Macalalad
LINDSEY MACALALAD
Legal Secretary